IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10069 OF 2022

The Nashik Merchant Co-operative Bank
(Multi State Scheduled Bank)
Having its administrative office at
A-16, Padmashri Babubhai Rathi Square,
Subhashchandra Bose Marg, Industrial
Estate, Satpur, Tq and Dist: Nashik,
With one of its Branch a Shola Chowk,
Opp. J.P.C. Bank, Jalna
Through its authorized officer ...Petitioner

Versus

1. The District Collector, Jalna.

2. The Tahsildar, Jalna

3. The Superintendent of Police,
S.B. Police Station, Jalna

4. M/s Mangalam Garments,
(a Partnership Firm), Having its office
at 1/8/97, Kapda Bazar, Ful Bazar Chowk,
Bearing CTS No.3169, Jalna
Through its Partnership

5. Anshuman Laxmikant Nevasekar
R/o: M.H. No. 1/8/97, Kapada Bazar,
Subhash Road, Tq. & Dist. Jalna

6. Mrs. Puman Anshuman Nevasekar
R/o: M.H. No. 1/8/97, Kapada Bazar,
Subhash Road, Tq. & Dist. Jalna

7. Soni Balaprasad Govindlal
R/o: Opp. JES College, Durgamata Road,
Jalna

8. Nagre Prasad Dilip
R/o: Shri Sadguru Krupa, Samarthnagar
Ward No.6, KhillariVasti, Shrirampur,
Ahmednagar – 413709 ...Respondents

Mr S.V. Adwant a/w Mr Harish S. Adwant a/w
Neha Kamble, Advocates for petitioner
Mr S.B. Yawalkar, AGP for Respondent Nos. 1 to 3/State
Mr Sanket S. Kulkarni, Advocate for Respondent Nos. 5 and 6

CORAM : MANGESH S. PATIL AND S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 15-02-2023
PRONOUNCED ON : 28-02-2023

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. The petitioner, a Multi-State Co-operative Bank approaches this Court under Article 226 of the Constitution of India with the prayers as under :-

> (B) By issuing an appropriate writ of mandamus or any other appropriate writ, or order or direction in the like nature, the respondent No.2 be directed to execute the order passed by the respondent No.1 by restituting the possession of the secured asset to the petitioner.
>
> (C) By issuing an appropriate writ or order, it be declared that the respondent Nos. 4 to 8 have violated the mandate of securitization act and the respondent No. 2 need to honour the order passed by the respondent No.1.

2. It is the contention of the petitioner that it is a Multi-State Co-operative Bank registered under the Multi-State Co-operative Societies Act, 2002, and is a 'Financial Institution' defined under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

3. The respondent No.4 / partnership firm through its partners – respondent Nos. 5 and 6 had obtained the financial assistance/loan facility of Rs. 61,95,000/- from the petitioner. The respondents Nos. 7 and 8 are

the guarantors. As per the terms of sanction, the respondent No. 6 secured the loan facility by creating the security interest of the petitioner-financial institution, over her property, as described in the mortgaged document. The respondent No. 4 defaulted in repayment of loan, consequently the loan account was classified as NPA on 29-06-2019 as per the RBI norms.

4. The petitioner in exercise of statutory right under the SARFAESI Act, 2002, served a demand notice to respondent Nos. 4 to 8, under section 13 (8) of the Act raising demand of Rs.65,93,858.29 in terms of section 13 (2) of the Act. Further measures under section 13(4) of the Act were taken. The symbolic possession of the secured asset was taken on 18-08-2020. The application No. 207/2020 was moved under section 14 of the SARFAESI Act with the District Collector, Jalna. It was allowed vide order dated 28-05-2021. In furtherance of the order dated 21-11-2020, the respondent No. 2 was authorized to hand over the possession of the secured assets to the petitioner. The possession was handed over to the petitioner on 06-08-2022 by adverting to the prescriptions of law. The panchanama to that effect was drawn. The petitioner then deployed security personnel at the site for protection of the secured assets.

5. On 22-08-2022, the sale notice was published as prescribed under Rules of 2002. At this juncture, the respondent Nos. 5 and 6 and two other men, broke open the shutter lock and unauthorizedly entered the premises and took over forcible possession of the property. The security

personnel informed the Branch Manager about forcible entry and illegal activities of the respondent Nos. 5 and 6. The Branch Manager after verifying the factual scenario, approached S.B. Police Station at Jalna and filed a complaint against the respondent Nos. 5 and 6. The concerned Police took cognizance and registered the F.I.R. No.0714/2022 dated 14-09-2022 against the respondent Nos. 5 and 6 and two other for the offences punishable under sections 447, 506 R/W Section 34 of the Indian Penal Code. Petitioner contends that the it tried to desist illegal activities of the respondent Nos. 5 and 6, however, the officers of the petitioner-bank were apprehended of false implication in a criminal charge of outraging modesty of the women deployed by the respondent Nos. 5 and 6 at the site. The petitioner represented respondent No. 2 to intervene and set the things right and assist the petitioner to preserve and protect the property. Unfortunately, the respondent No. 2 showed inability to intervene on the ground that he had already executed the order dated 21-11-2020 as per section 14 of the SARFAESI Act passed by respondent No.1.

6. In this background, the petitioner seeks to invoke jurisdiction of this Court under Article 226 of the Constitution of India for issuing appropriate directions against the respondent No.2 to execute the order passed by the respondent No.1 and to restitute the possession of secured assets to the petitioner. In response to notice of this petition, respondent Nos. 5 and 6 tendered affidavit-in-reply, so also, respondent No.2 submitted his affidavit-in-reply. They contend that once the order under section 14 of the SARFAESI Act was executed, the petitioner cannot seek

indulgence of the District Collector or his delegate. On execution of the order, authorities became *functus officio.* The petitioner may invoke other alternate remedies as per general remedies available under law. In absence of breach of fundamental right, the petitioner has no reason to invoke jurisdiction of this Court under Article 226 of the Constitution of India. It is further contended that the bank has misrepresented the authorities and took over the possession from the respondent Nos. 5 and 6.

7. The respondent No. 2 in his reply affidavit states that the order passed under Section 14 of the SARFAESI Act by the respondent No.1 / District Collector, was already executed. The actual possession of the secured assets was delivered to the petitioner on 06-08-2022. The respondent Nos. 1 and 2 stood discharged from their obligation under the statutory scheme prescribed under the SARFAESI Act. No provision under the Act provides for restoration of the possession to secured creditor that has been lost by him after execution of orders U/S 14 of SARFAESI Act..

8. We have heard the learned advocate appearing for the respective parties.

9. Mr S.V. Adwant, learned advocate submitted before us that the respondent Nos. 5 and 6 who have suffered loss of possession of secured assets on account of enforcement of statutory right conferred on the petitioner / secured creditor, have acted unlawfully, by using physical force and getting open the lock of petitioner put on the property. Thus, respondent No 5 & 6 have committed penal acts. The action on their part

is not only a matter of physical altercation, but tantamount to assault on the authority of law and statute. Even such action raises question of public order. He would urge that in the circumstances, indulgence of this Court is necessary to maintain supremacy of law. He would urge to direct the respondent Nos. 1 to 3 to restore the possession of the secured assets to the petitioner.

10. Mr S.B. Yawalkar, learned AGP would submit that the scheme under the SARFAESI Act provides for action in terms of section 14 regarding handing over possession to the secured creditors. Once the execution of order under section 14(2) is undertaken by the District Collector or his delegate and possession of the secured asset is handed over to the secured creditors, the District Magistrate becomes *functus officio* and no further indulgence would be expected of him. He would further submit that after receiving the possession as per panchanama dated 06-08-2022, it was the petitioner's responsibility to secure and protect his possession by taking necessary measures. The statutory obligation on the State machinery cannot be enlarged with further duty to protect the possession of secured creditors.

11. Mr Sanket Kulkarni, learned advocate for respondent Nos. 5 and 6 would submit that the petitioner bank has secured the possession without following due process of law. Even prior to execution of the order under section 14, the respondent Nos. 5 and 6 had made certain payments towards dues, the bank officer had assured that further action would be dropped. However, the possession of the property was taken

and it was handed over to the petitioner in breach of the mutual understanding between bank officer and respondent Nos. 5 and 6. He would further submit that the disputed questions of the fact cannot be gone into in writ jurisdiction. The petitioner-bank has already lodged FIR. The law will take its own course. No indulgence is required under writ jurisdiction of this Court since alternate remedies are available to the petitioner as per law.

12. We have considered the submissions advanced by the learned advocates appearing for the respective parties, perused the record. It is undisputed fact that the petitioner bank was put into possession of the secured assets under panchanama dated 06-08-2022 in pursuance of the order passed by Respondent No. 1 under section 14 of SARFAESI Act dated 21-11-2020 in application No. 207/2020. The sale notice dated 22-08-2022 was published by petitioner bank under Rules of 2002. On 14-09-2022 security guard deployed by the petitioner for protection of the secured asset informed the Branch Manager that at about 5.00 a.m., the respondent Nos. 5 and 6 along with two other unnamed persons broke open the shutter lock of the shop and unauthorizedly entered the premises and took forcible possession of the property. The Branch Manager of the petitioner bank lodged the complaint with S.B. Police Station at Jalna, which has been culminated into FIR No.0714/2022 for the offences punishable under sections 447, 506 and read with 34 of the IPC against the respondent Nos. 5 and 6 and two others.

13. The petitioner bank submitted representation dated 15-09-2022 with respondent No.2 / Tahsildar, Jalna requesting immediate intervention to preserve / restitute the possession of the petitioner bank. However, respondent No.2 / Tahsildar declined to assist the petitioner as the order passed by respondent No.1 has already been executed and he has no further obligation in the matter.

14. Pertinently, the respondent Nos. 5 and 6 in their affidavit-in-reply nowhere denied the aforesaid facts. They candidly admit having possessed secured assets. However, they contend that petitioner had secured possession of their property in breach of the understanding with bank officers, pending action under section 14 of the SARFAESI Act. The affidavit-in-reply filed by the respondent No.2 / Tahsildar states that there is no provision under law that would put any obligation upon him to re-execute the order passed by the respondent No.1, once the possession was handed over to the petitioner.

15. The petitioner bank had exercised its right under the SARFAESI Act and took recourse to the procedure prescribed under section 13(2), 13(4) and section 14 of the Act while taking possession of the secured assets under the order dated 21-11-2020 passed by the District Collector, Jalna. The petitioner bank was put into the possession under panchanama dated 06-08-2022. It appears that the petitioner bank had taken sufficient care to protect the secured property by deploying guards. The respondent Nos. 5 and 6 overpowered the guards by taking law in their hands, forcibly broke open the shutter lock of the shop, entered into the secured property

and took forceable possession. The bank officers took immediate steps to prevent unlawful act of respondent Nos. 5 and 6. They had rightly approached the Police authorities. The FIR was lodged promptly against respondent Nos. 5 and 6 for offences punishable under sections 447, 506 read with 34 of the IPC. They have approached respondent No.2 / Tahsildar for protection / preservation of their possession of the secured assets.

16. At this stage, a reference can be made to the order passed by Division Bench of this Court in Writ Petition No. 8674/2021 in the matter of ***Bank of Baroda Vs. The State of Maharashtra and Ors. dated 24-02-2022*** wherein, in similar set of facts, the directions were given against the District Magistrate to entertain the second application of the petitioner filed under section 14 of the SARFAESI Act.

17. Mr S.V. Adwant, learned advocate appearing for the petitioner also places reliance on the Judgment delivered by the Division Bench of High Court of Andhra Pradesh in case of ***M/s. Sri. Balaji Centrifugal Castings Vs. M/s ICICI Bank Limited. reported in (2018) SCC Online Hyd 368,*** wherein, it is held that there is no bar to secured creditor maintaining more than single application under section 14(1) of the SARFAESI Act for securing the possession of the very same secured assets.

18. The similar view has been reiterated by the High Court of Kerala in the matter of ***A.A. Kumaran Vs. Superintendent of Police, Thrissur and Ors. In WP (C) No. 5875 of 2022 dated 18-05-2022***

wherein the court observed thus :-

> *21. Further, the present case reveals an instance where a person has taken the law into his hands by force and thereafter seeks the benefit of legal principles. If such actions are permitted to be perpetrated, rule of law will suffer immeasurably. The purport of the Act is to divest the owner of a property in the enforcement of security interest and initiate measures to wipe off the liability by resorting to measures including sale. If measures taken for dispossession and consequent sale are inter-meddled by persons like respondents 4 and 5, it would result in a mockery of the rule of law. The will of the people reflected through the legislation will be seriously infringed, if the court remains a mute spectator.*

19. The High Court of Madhya Pradesh in the matter of ***Smt. Mishri Bai W/o Late Shri Nirmal Kumar and others Vs.Shubh Laxmi Mahila Cooperative Bank Ltd.,*** has observed thus :-

> *The secured creditor is not required to approach again and again before the District Magistrate or DRT for recovery of the amount, once the order has been passed under section 14 of SARFAESI Act until unless the entire outstanding amount is recovered, the order remains valid, therefore, the Tehsildar has not committed any error of law or he does not functus officio unless the entire outstanding amount is recovered by the bank. It is settled law that any order passed bny the Authority, quash-judicial authority or the Court or Tribunal remains valid unless reviewed, recalled, cancelled by the same authority or court or set aside by the Higher Court/Tribunal, thus the order passed by District Magistrate is still valid and Respondent No.1/Bank is free to take steps thereafter until the entire outstanding amount is cleared.*

20. The uncontroverted factual aspects in present matter depict that the respondent Nos. 5 and 6 have devised novel, unimaginable and unsustainable *modus operandi* to defeat ends of justice and fair play. It is not only the matter of physical altercation, but would tantamount to assault on the law and statute. They have the audacity to overrule the law. The

growing tendency of overpowering the law cannot be tolerated. In peculiar facts and circumstances of this case, we are inclined to exercise powers under Article 226 of the Constitution of India to protect the rule of law and deprecate rising tendency of using criminal force against recovery proceeding undertaken by the financial institutions in terms of SARFAESI Act. We do not find any prohibition under the scheme of the SARFAESI Act that comes in the way of District Magistrate or his delegate to re-exercise the powers to execute the orders passed under section 14.

21. After considering the factual and legal aspects of the matter, we are of the considered view that this is a fit case to exercise of our jurisdiction under Article 226 of the Constitution of India and allow the writ petition in terms of prayer clause (B) of the writ petition and award cost against respondent No 5 & 6. Accordingly, we pass the following order: -

ORDER

(A) The Writ Petition is partly allowed

(B) The respondent No. 2 / The Tahsildar, Jalna is directed to execute the order passed by the respondent No.1/The District Collector, Jalna and restitute the possession of the secured assets to the petitioner within a period of thirty (30) days from the date of this order.

(C) The respondent No. 5 & 6 shall deposit the cost of Rs. 25000/- within 30 days of this order in this Court failing which those shall be recovered as land revenue.

[S. G. CHAPALGAONKAR, J.] **[MANGESH S. PATIL, J.]**

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